

SUPPLEMENTAL NATIONAL ENVIRONMENTAL POLICY ACT GUIDELINES FOR OIL AND GAS ACTIVITIES ON PUBLIC LANDS



Prepared for the Federal Leadership Forum by the

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FEDERAL LEADERSHIP FORUM SUPPLEMENTAL NATIONAL ENVIRONMENTAL POLICY ACT GUIDELINES FOR OIL AND GAS ACTIVITIES ON PUBLIC LANDS

PURPOSE

These guidelines establish the role and responsibilities of the Bureau of Land Management, National Park Service, Fish and Wildlife Service, Forest Service and Environmental Protection Agency, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, when preparing environmental documents associated with oil and gas activities within the states of Utah, Colorado, Montana, Wyoming, and North and South Dakota. These guidelines set a framework for an early, consistent, and effective process by which affected agencies maximize interaction and exchange information and opinions on issues, questions or concerns; identify and resolve significant issues; and develop feasible alternatives to the extent practicable. Additionally, these guidelines should foster the resolution of conflicts where genuine tradeoffs exist in the issues under discussion. These guidelines are the work of the Federal Leadership Forum, an interagency process begun in 1998, and have been adopted by the regional and state offices of the agencies listed above.

INTRODUCTION

This guidance supplements the NEPA guidance found in regulation and other agency-specific guidance. Some of these guidelines are intentionally redundant with existing guidance for emphasis and clarification. This guidance applies only to the preparation of Environmental Impact Statements unless otherwise specified.

The rule of "reasonableness" applies to the use of this document. It is not intended to increase paperwork or expenditure of time, but to improve agency coordination and public involvement, provide better data to evaluate impacts and alternatives, and make good, informed decisions. This guidance is intended to be used where the effects of proposed oil and gas exploration and development are likely to be controversial or result in potentially significant impacts. Where this is not the case, standard NEPA procedures are to be followed.

	CONTENTS	PAGE
	Definitions	1
A.	Agency Contact Procedures	2
B.	Identification and Participation of Stakeholders	2
C.	Notice and Agency Cooperation	3
	The Lead Agency Responsibilities	3
	Stakeholders' Responsibilities	4
D.	Data Gaps	4
E.	Environmental Assessment (EA) vs. Environmental Impact Statement (EIS)	5
F.	Mitigation Measures	6
G.	Record of Decision	6
Appendix A	Air Quality	7

DEFINITIONS

1. **Stakeholders** are any affected federal, state, or local agency, tribal government, industry, special interest group or general public.
2. **Air Quality Stakeholder Groups** are those affected Federal Land Managers, State Air Quality personnel, EPA, tribal governments, industry representatives, academic representatives and environmental groups who will review the air quality protocol for each NEPA document on a case-by-case basis.
3. **Indian Tribe** means an Indian or Alaska Native tribe, band, nation, Pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to 25 U.S.C. §479a.
4. **Scoping** means the early and open process used to determine the scope of issues to be addressed, as well as identifying the significant issues related to a proposed action. Scoping usually follows the publication of a Notice of Intent by the lead agency.
5. **Mitigation Measures** are stipulations that minimize impacts by limiting the degree or magnitude of the action and its implementation.
6. **Control Measures** are technologies and practices assumed to be part of a Proposed Action and Alternatives, and designed to limit air quality impacts.

A. AGENCY CONTACT PROCEDURES

Each agency shall develop and maintain a list of current agency contacts for annual distribution and/or inclusion on the agency's Internet web site. The agency contact list shall include particular National Environmental Policy Act (NEPA) project staff as well as more general agency NEPA policy and technical staff. The list shall contain team leaders, staff specialists or analysts, reviewers and decision-makers at the local, regional and national level. and provide the following information:

1. Individual's name;
2. Position;
3. Primary NEPA duties and/or role in the process (Be clear about collateral technical abilities or responsibilities to aid in interagency communication and notification.);
4. Telephone and telefax numbers;
5. E-mail address; and
6. Mailing address.

In addition, each agency shall identify a staff person (title and office) to receive:

All written notification, including procedural NEPA notices or requests (notice of availability of environmental documents, public notices, etc.); or

The actual documents (if different from above) for review or internal agency distribution.

B. IDENTIFICATION AND PARTICIPATION OF STAKEHOLDERS

Each agency shall identify stakeholders during early discussions on potential oil and gas actions or in the initial planning process for proposed oil and gas actions. With the early involvement of stakeholders in the NEPA process, the identification and analysis of issues can be performed and expectations and concerns of stakeholders can be defined and addressed prior to the completion of the analysis (such as air quality, water quality, and endangered species issues).

- 1 Identify potential stakeholders within the boundaries of the proposed action's potential environmental effect. Such environmental boundaries rarely coincide with jurisdictional boundaries. The potential affected environment may encompass larger areas based on an ecosystem approach, air/weather patterns, watersheds, transportation or utility routes, and may require the identification of additional concerns and/or the participation of multiple stakeholders.
2. Determine the appropriate level of formality to be used based upon the nature of the action and the degree of the stakeholder's interest.

C. NOTICE AND AGENCY COOPERATION

1. Goals

The major goal of the Federal Leadership Forum is to achieve consensus among federal agencies on major or significant issues as a result of a proposed oil and gas action. The process outlined below is an initial mechanism to achieve consensus; however, when a consensus cannot be achieved, the lead agency will clearly document the rationale for its decision and notify the other federal agencies involved in the stakeholder process. The federal agencies may ask for the assistance of the Core Team, an interagency working group, in their efforts to reach consensus.

- a. The lead agency should provide written notice to affected or potentially affected stakeholders. Such notice should be issued early in the planning stages of a potential oil and gas action in order to effectively and efficiently inform stakeholders of proposed NEPA actions. The actual notice must include a summary of the potential action and sufficient information for the stakeholder to assess its potential effects. The stakeholder's response to this notification can be used in determining the level of interest.
- b. Stakeholders should be provided reasonable time to indicate whether and how they will participate in the planning and environmental process. However, this step should not add to the existing EIS time line.
- c. Consideration should be given to ensuring efficient communication with stakeholders through established agency procedures including direct mailing, telephone, telefax and the use of electronic mail.
- d. Federal agencies and stakeholders are encouraged to meet and develop basin-wide, statewide, or other reasonable or logical environmental boundary notification processes.

2. Lead Agency Responsibilities

- a. Use stakeholder meetings, workshops, informal discussions, or other communication mechanisms, as appropriate, to identify issues, data (and data gaps), analytical methods, mitigation measures, potential reasonable alternatives, and the appropriate geographic divisions for analysis.
- b. Establish working groups to evaluate the information gained through 2a. The working groups may also be used to identify and eliminate from detailed or further study issues, alternatives, and mitigation measures that are not significant, are ineffective, or have been covered by prior environmental review. The work groups may also be used to address cumulative impacts.

- c. Invite other federal or state agencies, or tribal governments, that have jurisdiction, special expertise or interest to participate in the process as cooperating agencies.
- d. Invite or request individual(s) from other federal, and state agencies or tribal governments with special expertise to participate in the preparation of the environmental documents.
- e. The lead agency should include in the EIS a summary description of the stakeholder process and information gained.

3. Stakeholders' Responsibilities

- a. Provide resource data and information, identify data gaps, and evaluate whether additional information is essential to a reasoned choice among alternatives.
- b. Consider serving as a cooperating agency or providing technical assistance such as peer review of the resulting analysis, or detailing staff with special expertise to the lead agency.
- c. Offer and describe alternative analytical methods for impact assessment when in disagreement with the lead agency's methods and provide a rationale for why an alternative method is preferred.
- d. When serving as a cooperating agency, the federal or state agency or tribal government shall perform responsibilities as agreed to by letter or memorandum, and shall specify preferred or alternative mitigation measures it considers necessary to allow the lead agency to grant or approve the applicable permit, or license.
- e. Develop and prepare substantive comments specific to the project being analyzed and submit them in a timely manner.

D. DATA GAPS

1. **During the stakeholder process** the data required to complete the impact analysis of the proposed action should be identified. If data gaps are identified the lead agency shall make a determination:
 - a. Whether the incomplete information or data is relevant to reasonably foreseeable significant adverse impacts and is essential to a reasoned choice among alternatives.
 - b. Whether the cost of obtaining the information is exorbitant, or the means to obtain it are not known, or the gaps cannot be filled in a timely fashion relative to a specific analysis.

- c. Whether other stakeholders believe the information is critical enough to gather and are willing to support the effort.
2. **If the cost of obtaining the information is exorbitant**, the means to obtain it are not known, or the gaps cannot be filled in a timely fashion relative to a specific analysis, the lead agency shall:
- a. Inform the stakeholders; or
 - b. Hold a meeting or create a stakeholder working group to discuss:
 - The need for the information.
 - ii. Evaluation and prioritization of information needs.
 - iii. Options of co-funding or alternative funding mechanisms for long-term data acquisition beyond the current EIS.
3. **If a determination is made not to collect the data** based upon (1) exorbitant cost, (2) unknown means of collection, (3) un-timely collection relative to the immediate NEPA need, or (4) clear inconsistency with an agency's essential function, the lead agency shall notify the stakeholders of its decision and explain its rationale in the NEPA document.

E. ENVIRONMENTAL ASSESSMENT (EA) VS. ENVIRONMENTAL IMPACT STATEMENT (EIS)

Stakeholders often vary in their opinions about whether to prepare an EA versus an EIS for a given action. To ensure that the lead agency has all the necessary information when considering the preparation of an EA rather than an EIS, the lead agency shall notify the same stakeholders that would normally be contacted for an oil and gas action requiring an EIS. The lead agency will also contact the stakeholders to update existing information.

When a lead agency decides to prepare an EA in cases where one or more stakeholders express a desire for an EIS, it shall communicate the decision and rationale to the stakeholder(s) early in the process, make the information available on the agency's web site, and receive and consider comments on its decision and rationale from stakeholders who choose to submit them.

The lead agency will consider the information, data, and concerns of stakeholders, where appropriate, during the preparation of the EA.

The lead agency will distribute copies of EAs, EISs, and FONSIIs to interested stakeholders by sending copies to assigned contacts and by posting notice of the documents on its web site.

F. MITIGATION MEASURES

The lead agency will seek out and include potential mitigation measures proposed by stakeholders early in the NEPA process to accompany the proposed action and alternatives presented at scoping. These mitigation measures will be considered even if they are outside the jurisdiction of the lead or cooperating agencies, or unlikely to be adopted or enforced by the responsible agency. Disclosure of potential or speculative issues and environmental impacts during the scoping process may lead to identification of mitigation opportunities and alternatives from cooperating agency(s), other agencies, and the public.

A mitigation measure:

avoids the impact altogether by the agency not taking the action or parts of the action;

minimizes the impact by limiting the degree or magnitude of the action or its implementation;

rectifies the impact by repairing, rehabilitating or restoring the affected environment;

reduces or eliminates the impact over time by preservation and/or maintenance during the life of the action; or

compensates for the impact by replacing or providing substitute resources.

To the extent possible, preliminary mitigation measures will be addressed early in the process to aid in the development of adequate alternatives to the proposed action.

G. RECORD OF DECISION

As part of the Record of Decision, the lead agency will:

Summarize alternatives considered in reaching its decision and specify the alternative or alternatives which were considered to be environmentally preferable.

Include a concise summary of mitigation measure that the lead agency has adopted.

State whether all practicable means to avoid or minimize environmental impacts from the selected alternative are adopted, and if not, why. Where applicable and not already stated under 2. above, monitoring and enforcement programs that are adopted will be summarized.

APPENDIX A: AIR QUALITY IMPACT ASSESSMENT

These guidelines are intended to supplement or clarify the framework for the EIS analysis of air quality impacts of proposed oil and gas actions.

A. IDENTIFICATION AND PARTICIPATION OF AIR QUALITY STAKEHOLDERS

The lead agency will organize an air quality interagency working group consisting of representatives from affected federal and state agencies, and, where appropriate, tribal governments, industry, and special interest groups, and those with special expertise or regulatory authority. It should be noted that the role of the air quality working group is to maximize cooperation and coordination prior to, and through, the preparation of the EIS, to ensure the resolution of concerns and to eliminate the submission of adversarial comments on a completed document.

In general, the air quality working group will assist, make recommendations, and provide support to the lead agency. The working group will review and comment on the air quality data, the collection and use of the data, and the methods of interpreting the data presented in the EIS.

One of the duties of the air quality working group is to review the air quality modeling protocol when it is used. As part of the protocol, a description of the dispersion model and emission sources to be used in the analysis should be provided to the air quality working group for review, comment, and recommendation.

The working group should assist in the identification of existing and reasonably foreseeable air pollution emission sources and data, ambient monitoring, source monitoring, and other relevant environmental information along with the development of reasonable alternatives to examine different control technologies.

After the lead agency defines the spatial extent of the proposed action and the alternatives and identifies the reasonably foreseeable emission sources, it should present the information to the air quality working group for review and recommendation.

B. AIR QUALITY DATA COLLECTION

Prior to the preparation of the affected air quality and meteorology environment sections of an EIS, it is important for the lead agency to gather adequate data. The lead agency, with the assistance of the air quality working group, will attempt to obtain data, identify data gaps, and determine the need for additional data. In addition to gathering information from stakeholders, existing planning documents (federal, state and local) may be used to identify data, data needs, and data sources.

The scoping process should also solicit air quality information from the public. In particular, the lead agency should gather:

- 1 All emissions and secondary growth sources associated with the project from the various alternatives;
2. Reasonably foreseeable air emissions in the airshed for a cumulative impact analysis not accounted for by ambient monitoring (Affected Environment);

RFAs' source emissions (increases and reductions), especially those that could occur during the lifetime of the proposed project;

- 4 Ambient monitoring, source monitoring, and other environmental information;
5. The desirability of developing alternatives to examine different control technologies;
6. The most recent and representative background Clean Air Act criteria pollutant concentration values from the applicable air regulatory agency;
7. Other relevant air quality, meteorology, and air quality-related values information from applicable land management research studies, or other readily available sources;
- 8 The most recent and representative meteorology data from SCRAM, SAMSON, RAWs or other appropriate sources; and

Once the data is received, the lead agency shall evaluate the technical and describe any adequacy or inadequacies used in the EIS.

C. AFFECTED ENVIRONMENT – AIR QUALITY AND METEOROLOGY

In general, the description of the air quality and meteorology within the environmental boundaries of the proposed action should be as succinct as possible and no longer than is necessary to understand the effects of the alternative. The level of information presented should equate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

For each EIS, the lead agency will define the spatial extent of the proposed action and the Alternative's direct impacts, then determine what other reasonably foreseeable emission sources (those not already represented by the background/affected environment) are likely to have additive impacts. The lead agency will present the proposed boundaries and sources included in the air quality cumulative impact analysis to the interagency working group for review, comment and consideration.

D. IDENTIFICATION OF REASONABLY FORESEEABLE ACTIONS

A major aspect to addressing the potential air quality cumulative impacts is the identification of all existing and reasonably foreseeable air pollution emission sources. Others should be encouraged to identify any existing and reasonably foreseeable emission sources not already identified by the stakeholders during scoping.

Conjectural and speculative emission sources will be listed and described and the lead agency will state why it did not further analyze those sources. The lead agency, however, is responsible for making an informed judgement, predicting future impacts based on the reasonably foreseeable emission sources, deciding the boundaries or time limitation for declaring new RFAs, stating input deadlines and disclosing the information to all interested stakeholders.

E. AIR QUALITY PROJECT CUMULATIVE IMPACT ANALYSIS

Depending upon the level of analysis and scope of the proposed action, it is important to recognize that in some cases a project-specific cumulative impact analysis does not yield the same conclusion as an air quality regional analysis.

1. Project-Specific Analysis

The air quality cumulative impact analysis should focus on the potential direct and indirect impacts associated with the proposed action and other reasonable alternatives when added to other past, present and reasonably foreseeable future actions as identified by the lead agency with the assistance of the air quality working group. A determination should be made by the lead agency whether the proposed action and other sources that have a potential impact to a sensitive receptor should be included in the air quality cumulative impact analysis.

2. Regional Assessments

Preparation of a regional air quality analysis should be considered if the lead agency determines a need for a cooperative interagency effort to provide additional information to support future oil and gas actions. The domain of the analysis should be determined by assessing the reasonable extent of impacts from the projected action.

F. Mitigation Measures Included and Disclosed

For facilities emitting air pollutants, disclosed control measures must be at least as strict as those required by the local/state agency(ies) having jurisdiction over air emissions. If there is still a potential for significant adverse air quality impacts (after meeting the local/state agency(ies) permitting requirements), the EIS may identify stricter potential mitigation measures even where these measures cannot be committed to in the ROD.

Potential mitigation measures identified in the EIS should clearly disclose where authority to implement does and does not exist (i.e., federal agencies, state air regulatory agencies, etc.). The EIS should disclose the effectiveness (qualitatively or quantitatively) of the potential mitigation measures based on existing knowledge. This will enable the public and the decision maker to distinguish the differences in environmental impacts based on different types of mitigation.

In particularly important cases, the lead agency may establish a monitoring program to assure that decisions are carried out. The types and costs of monitoring (including existing monitoring) should be presented in the EIS to provide the decision-maker with adequate information. When significant adverse impacts cannot be minimized or avoided, monitoring should be included in the ROD in order to assess impacts to air quality and air quality-related values.